CABLE HUSTON BENEDICT HAAGENSEN & LLOYD LLP

ATTORNEYS AT LAW
SUITE 2000
1001 SW FIFTH AVENUE
PORTLAND, OREGON 97204-1136

TELEPHONE (503) 224-3092
FACSIMILE (503) 224-3176

CHAD M. STOKES

cstokes@chbh.com
www.cablehuston.com

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VIA ELECTRONIC FILING

Carol Washburn
Executive Secretary
Washington Utilities & Transportation
Commission
1300 S. Evergreen Park Drive, S.W.
P.O. Box 47250
Olympia, WA 98504-7250

Re: Inquiry into Small Natural Gas and Propane Gas Pipelines
Docket No. PG-051355

Dear Ms. Washburn:

This letter submits the **Comments of the Northwest Industrial Gas Users Regarding Possible Regulation of Customer-Owned Piping behind the Distribution Meter** in the above-referenced Docket.

Thank you for the opportunity to submit comments in this matter.

Very truly yours,

Chad M. Stokes

NH/nh
Enclosure

BEFORE THE

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Inquiry into Small Natural Gas and Propane Gas Pipelines	)	Docket No. PG-051355

COMMENTS OF THE NORTHWEST INDUSTRIAL GAS USERS REGARDING POSSIBLE REGULATION OF CUSTOMER-OWNED PIPING BEHIND THE DISTRIBUTION METER

INTRODUCTION

The Washington Utilities and Transportation Commission's ("WUTC's" or "Commission's") Staff has requested comments regarding the Inquiry into Small Natural Gas and Propane Gas Pipelines in Docket PG-051355 ("Inquiry"). The intent behind the Inquiry is to gather information regarding the safety risks of small gas pipeline systems and possible safety measures that could be taken to mitigate those risks. For purposes of this Inquiry, the Commission has suggested that small gas pipeline systems include all (including public-owned) pipeline systems distributing gas, including propane, to more than one building. The Commission's Inquiry noted that small gas pipeline systems do not include local distribution companies, transmission pipelines or high-pressure or large diameter customer-owned systems. It is the Northwest Industrial Gas Users' ("NWIGU") understanding that this Inquiry is not intended to cover customer-owned natural gas piping located behind the distributor's meter at industrial facilities.

NWIGU urges the Commission to ensure that any regulatory changes proposed as a result of this Inquiry are tailored to avoid unlawfully expanding the Commission's jurisdiction to industrial customer-owned natural gas piping located behind the distributor's meter.[1] NWIGU notes that the Commission recently clarified that WAC 480 "does not apply to customer-owned facilities, where the customer is the end user, and the customer-owned facilities are on the customer's side of the distribution meter." WAC 480-93-007 (2). These current applicability provisions properly clarify that the Commission's safety jurisdiction ends at the LDC's meter unless the customer of the LDC is operating a true master meter system. Nothing in this rulemaking should blur the jurisdictional line that this Commission clarified when it adopted WAC 480-93-007(2) earlier this year.

The only regulation of natural gas piping facilities located behind the distributor's meter that exists today, or should apply upon conclusion of this rulemaking, are to those operating a "master meter system" under WAC 480-93-005(16) (expressly incorporating 49 CFR §191.3). Under the Commission's rules, operators include master meter operators (WAC 480-93-005 (17) (c)).

NWIGU will not opine on the technical or policy questions raised in the Inquiry, but would note that, to the extent the Commission identifies safety concerns with master meter system operators, the Commission retains the authority to impose additional or

[1] In these comments, NWIGU is not addressing regulation of piping systems that directly connect an end user's facilities to an interstate pipeline. Safety regulations of direct connect pipes are identical to the regulations applicable to a local distribution company's ("LDC's") distribution lines, which are both subject to WUTC safety jurisdiction. The direct connect customer's internal piping, however, remains outside the WUTC's jurisdiction.

different requirements on any operator in appropriate circumstances, consistent with the requirements of law under WAC 480-93-008.

NWIGU desires to participate and support the Commission's efforts with regard to pipeline safety and rulemaking with regard to these master meter systems, but it is important to first clarify that a jurisdictional bright line exists under RCW 80.28.210. The WUTC's safety jurisdiction under RCW 80.28.210 ends when the transportation of gas ceases. The transportation of gas ceases when the gas is delivered to the customer by the distributor at the meter, unless the customer is operating a "master meter system." To be a "master meter system" the gas must be distributed by the receiving party to other customers after it has been delivered by the Local Distribution Company ("LDC"). Customer-owned piping systems behind the distributor's meter, where there is no distribution to other customers, do not constitute "master meter" arrangements that trigger regulation under RCW 80.28.210 or WAC 480-93-005(16) because there is no further "transportation" of gas. Thus, there is no jurisdictional basis for imposing the safety regulations traditionally applied to intrastate natural gas pipeline operators, i.e., LDCs and direct connect intrastate pipelines,[2] on those that merely own or operate customer-owned piping downstream of the meter. This interpretation is consistent with federal pipeline safety laws. Finally, the concerns identified in Staff's Discussion paper do not apply to gas piping located behind the distributor's meter. In particular, industrial facilities are usually operated and maintained by professionals, and such employees are

[2] WUTC safety regulation of direct connect pipelines applies from the gate station where the interstate pipeline connects with the customer-owned transport lines to the point where the gas enters the internal piping system of the customer. The internal piping of a direct connect customer is not "transporting" gas and thus is not subject to WUTC jurisdiction under RCW 80.28.210 for the same reasons that apply to customers taking service from an LDC.

knowledgeable about applicable pipeline safety requirements. Therefore no policy reason exists to regulate these facilities.

DISCUSSION

A. Safety Regulation Over the Transportation of Gas Under RCW 80.28.210 Ends at the Distributor's Meter.

The language of RCW 80.28.210, coupled with the common usage of these terms in the natural gas industry, does not support extending WUTC safety jurisdiction beyond the meter, unless the customer receiving the gas then distributes the gas to other customers.

It should be recognized that the "primary objective of statutory construction is to carry out the intent of the legislature." *Anderson v. O'Brien*, 84 Wn.2d 64, 67, 524 P.2d 390 (1974) (citing *Amburn v. Daly*, 81 Wn.2d 241, 501 P.2d 178 (1972)). When interpreting a statute, a court does not construe a statute that is unambiguous. The term "transporting" natural gas, using the proper technical context, is unambiguous. Transportation ends when a distributor delivers the gas. A court is not allowed to interpret what has no need of interpretation. *See Shelton Hotel Co., Inc. v. Bates*, 4 Wn.2d 498, 508, 104 P.2d 478 (1940) (quoting Black on Interpretation of Laws (2d ed.) 45, 48, 19, 53).

Principles of statutory construction also instruct a court to avoid literal readings of a statute if it would result in unlikely, absurd or strained consequences. *State v. Elgin*, 118 Wn. 2d 551, 555, 825 P.2d 314 (1992). Interpreting "transporting" natural gas so as to extend the jurisdiction of the WUTC after the distributor has delivered the gas would result in unlikely, absurd and strained consequences. Such a reading could ultimately

require the WUTC to regulate gas piping in residential backyards that lead to hot tubs or swimming pools. It is unlikely this was ever the intent of the statute.

"The process of interpreting and applying a statute must begin with the assumption that the purpose and meaning of the legislature are correctly and definitely expressed by the language employed in the act; and the intention of the law-making body is first of all to be sought in the words of the statute, taking them in their natural and ordinary sense—words of common use in the commonly accepted signification and technical terms in the proper technical sense...." *See Shelton Hotel Co.,* 4 Wn.2d at 507 (quoting Black on Interpretation of Laws (2d ed) 45, 48, 19, 53) (emphasis added). The technical and common usage of the term "transporting" natural gas does not support a reading of the statute that would extend the WUTC's jurisdiction beyond the distributor's delivery point.

If the Commission determines that the intent is not clear from the language of the statute, the Commission may resort to statutory construction. *Cherry v. Municipality of Metro. Seattle*, 116 Wn.2d 794, 799, 808 P.2d 746 (1991); *see also H.O. Meyer Drilling Co. v. Alton V. Phillips Co.*, 2 Wn. App. 600, 605, 468 P.2d 1008 (1970), *aff'd*, 79 Wn.2d 431 (1971)(canons of construction are utilized only if the statute, considered as a whole, is ambiguous). Looking beyond the language of the statute and resorting to extrinsic aids is permissible.[3] *See Paulson v. County of Pierce*, 99 Wn.2d 645, 650, 664 P.2d 1212 (1983).

[3] Legislative history is not available at the Washington State Archives for legislation passed prior to 1970. RCW 80.28.210 was originally passed in 1955, with amendments in 1961 and 1969.

In the 40 years since the passage of RCW 80.28.210, there has been very little disagreement over the meaning of the term "transporting natural gas." There is no evidence that the Commission ever considered interpreting the term "transporting natural gas" to apply to customer-owned piping systems behind a distributor's meter. It is also beyond dispute that such piping systems have existed in Washington from the time natural gas was first brought to the state of Washington in the 1950's. The fact that approximately 40 years passed before anyone suggested that natural gas is still being transported after it has been delivered through the meter strongly supports the conclusion that the term "transporting natural gas" was never intended to apply to movement of the gas in customers' lines. There is no reason to reinterpret these words now, as they have been given their ordinary meaning for over 40 years.

Federal safety regulation over the transportation of gas is an extrinsic aid that can provide contextual clues to the Washington legislature's intent. Federal safety regulation supports a reading of the statute that the transportation ends when the customer receives the gas from the distributor at the meter. The end point of the WUTC's safety regulation over natural gas piping is when the gas is delivered to the meter.

1. The Language of RCW 80.28.210 and Context Provided by Industry Specific Terms Supports a Conclusion that Transportation Ends at the Meter.

The WUTC's safety jurisdiction is triggered by the "transporting" of natural gas. The jurisdictional question thus posed under the statute is: Does the transportation of gas cease once it is delivered to the customer through the distributor or the customer's meter, or does the gas continue being "transported" by the customer until it is burned? RCW 80.28.210 provides:

> Every person or corporation transporting natural gas by pipeline, or having for one or more of its principal purposes the construction, maintenance or operation of pipelines for transporting natural gas, in this state, even though such person or corporation not be a public service company under chapter 80.28, and even though such person or corporation does not deliver, sell or furnish any such gas to any person or corporation within this state, shall be subject to regulation by the utilities and transportation commission insofar as the construction and operation of such facilities shall affect matters of public safety, and every such company shall construct and maintain such facilities as will be safe and efficient.

(Emphasis added.)

The language of the statute, coupled with the common usage of industry specific terms, supports the conclusion that gas is not being "transported" after it is delivered to the customer. Since delivery takes place at the point where the gas has passed through the meter and has entered the customer's line, the Commission's jurisdiction under RCW 80.28.210 extends to the point of delivery, but not beyond that point. When the gas reaches the customer's piping, having first passed through the distributor's meter, the transportation of the gas has ceased.[4]

In the natural gas industry, "transport" is synonymous with the "transmission" of gas and is considered a separate stage in natural gas service, different from distribution or end use. For example, the Natural Gas Information and Educational Resources website[5]

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[4] If the customer were to transport the gas off its property, there is a legitimate question of whether the gas has then begun a new transportation path and is legally then being "transported." For purposes of these comments, NWIGU is assuming that once the distributor delivers the gas, the gas stays on the property of the customer in pipes owned or operated by the customer. If the customer is a tenant, the property owner may actually own the pipes.

[5] The Natural Gas Information and Educational Resources website (www.naturalgas.org), which debuted in early October 1996, is the result of an industry-wide collaborative effort sponsored by the Natural Gas Supply Association ("NGSA"), the Independent Petroleum Association of America ("IPAA"), and the National Ocean Industries Association ("NOIA") with contributions made by the International Center for Gas Technology Information ("ICGTI") and other gas industry associations. Designed to educate the

contains a link which describes the natural gas industry from exploration to end use. The website refers to the "transport" and "transmission" of gas interchangeably. The website identifies seven separate stages in the provision of natural gas, including: exploration, extraction, production, transport, storage, distribution and end use. The "transport" section discusses the "transportation of natural gas," noting that "[t]he transportation system for natural gas consists of a complex network of pipelines, designed to quickly and efficiently transport natural gas from its origin, to areas of high natural gas demand. " The site defines "distribution" as the "final step in delivering natural gas to end users" most often from an interstate pipeline to local customer as performed by LDCs. Thus, industry terms do not support a reading that the transportation of gas extends behind the meter.

The regulation of interstate natural gas transportation under the Natural Gas Act, 15 U.S.C. § 717 *et seq*., and federal courts expounding upon the distinctions between interstate and intrastate natural gas regulation, confirm the industry demarcation between transportation, distribution and consumptive use behind the meter. *See, e.g., Cascade Natural Gas Corp. v. Fed. Energy Regulatory Comm'n*, 955 F.2d 1412, 1420-21 (10th Cir. 1992)(local distribution, as Congress viewed the term, involves two components: the retail sale of natural gas and its local delivery, normally through a network of branch lines designed to supply local customers).

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general public on natural gas without company-specific overtones, the site consolidates general information on the US gas industry for use by students, teacher, journalists, legislators, foreign gas industry leaders and others.

2. NWIGU's Interpretation Is Consistent with Long-Standing Commission Policy.

NWIGU's interpretation of the scope of the WUTC's jurisdiction under RCW 80.28.210 is consistent with the Commission's own interpretation of its jurisdiction as applied in its most recent revisions to the gas safety rules this last year and in the past. A letter sent on June 13, 1995, addressed to Ms. Deborah J. Martin, then Manager of Gas Engineering at the Washington Water Power Company from Steve McLellan, the Secretary to the Commission in 1995, stated:

> It is also the Commission Staff's position that master meter audits of certain industrial customers are not necessary. This would be in cases where an industrial customer controls access to the area served by the gas (e.g., a chain link fence) and members of the general public are not allowed access. The intent is, as with prior enforcement activities, to ensure that public safety is not compromised. The Commission has focused its regulatory resources in the past on residential and commercial applications rather than industrial, because in our experience industrial operators have tended to be more familiar with the hazards of natural gas pipelines and more capable of maintenance and other means of preventing problems. We plan no change in this approach at present.

If the Commission had viewed piping beyond the distributor's meter at customer sites to constitute "transporting" gas, the WUTC could not have simply decided to ignore safety regulation of piping located on industrial sites as demonstrated by the 1995 letter. Nothing has changed in either Washington or federal law to require the WUTC to reinterpret its jurisdiction under RCW 80.28.210 to extend downstream of the meter. The Commission rightly concluded in 1995 and again in 2005 that it does not regulate customer-owned piping and should confirm again in this docket that it is not so required or authorized.

3. Federal Jurisdiction Does Not Extend Past the LDC's Meter.

Federal law is an extrinsic aid that the Commission may use to provide contextual clues as to the legislative intent of RCW 80.28.210. The Office of Pipeline Safety's regulations clarify that there is no safety jurisdiction under 49 USC § 60102 over customer-owned piping downstream of the LDC's meter. 49 USC § 60102(a)(2)(A) gives the Secretary of Transportation ("Secretary") the authority to prescribe minimum safety standards for "pipeline transportation and for pipeline facilities," which are to apply specifically to owners and operators of pipeline facilities. As used in this section, "pipeline facility" means, among other things, a "gas pipeline facility" and "gas pipeline facility" includes "a pipeline, a right of way, a facility, a building, or equipment used in transporting gas or treating gas during its transportation." 49 USC §§ 60101(a)(3),(a)(18). The term "pipeline transportation" means, "transporting gas and transporting hazardous liquid." *Id.* at (a)(19). The Code further specifies that "transporting gas" means "the gathering, transmission, or distribution of gas by pipeline, or the storage of gas, in interstate or foreign commerce . . . [and] the movement of gas through regulated gathering lines." *Id.* at (a)(21)(A)–(B). Thus, the Secretary's safety jurisdiction extends to gas pipelines that serve the gathering, transmission, or distribution functions in interstate or foreign commerce as articulated in this statute. The terms gathering, distribution and transmission are not further defined in this section.

The Secretary has promulgated its minimum federal safety standards in Title 49, part 192 of the Code of Federal Regulations. Specifically, that part "prescribes minimum safety requirements for pipeline facilities and the transportation of gas...." 49 CFR §192.1(a). The Secretary's regulations do not further define "transportation of gas"

(rather, the definition is consistent with the Code provision above) but they do describe the nature of the pipeline that serves the function of transporting, distributing and gathering, as described in the Code sections above. The relevant definitions in part 192 are as follows:

> "Distribution Line means a pipeline other than a gathering or transmission line.
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> * * *
>
> "Gathering Line means a pipeline that transports gas from a current production facility to a transmission line or main.
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> * * *
>
> "Main means a distribution line that serves as a common source of supply for more than one service line.
>
> "Pipeline means all parts of those physical facilities through which gas moves in transportation, including pipe, valves, and other appurtenance attached to pipe, compressor units, metering stations, regulator stations, delivery stations, holders, and fabricated assemblies.
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> "Pipeline facility means new and existing pipelines, rights-of-way, and any equipment, facility, or building used in the transportation of gas or in the treatment of gas during the course of transportation.
>
> "Service line means a distribution line that transports gas from a common source of supply to an individual customer, to two adjacent or adjoining residential or small commercial customers, or to multiple residential or small commercial customers served through a meter header or manifold. A service line ends at the outlet of the customer meter or at the connection to a customer's piping, whichever is further downstream, or at the connection to customer piping if there is no meter.
>
> * * *

> "Transmission line means a pipeline, other than a gathering line, that:
>
> (1) Transports gas from a gathering line or storage facility to a distribution center, storage facility, or large volume customer that is not down-stream from a distribution center;
>
> (2) Operates at a hoop stress of 20 percent or more of SMYS; or
>
> (3) Transports gas within a storage field.
>
> Note: A large volume customer may receive similar volumes of gas as a distribution center, and includes factories, power plants, and institutional users of gas."

See 49 CFR §192.3.

Federal regulations remove any ambiguity about the jurisdictional treatment of customer-owned gas pipes. 49 USC § 60101(a)(21)(A) and 49 CFR 192.3 define a service line to be a type of distribution line. A service line serves the function of distribution, and ceases to be a service line, and therefore ceases to serve the function of distribution, when the gas reaches a "(1) customer meter or the connection to a customer's piping, whichever is farther downstream, or (2) the connection to a customer's piping if there is no customer meter." *See* 49 CFR §192.3. While all other kinds of pipelines are specifically and narrowly defined in the context of these regulations, there is no similar definition for customer-owned piping downstream from the meter or connection to a service line, because federal law does not give the Secretary jurisdiction over such piping.

Other federal safety regulations are consistent with the bright line interpretation that jurisdiction ends at the meter. For example, the Secretary has promulgated a rule that requires operators of service lines to provide certain notifications to customers who in fact have piping downstream of a meter. 49 CFR §192.16 provides the following:

> "(a) This section applies to each operator of a service line who does not maintain the customer's buried piping up to entry of the first building downstream, or, if the customer's buried piping does not enter a building, up to the principal gas utilization equipment or the first fence (or wall) that surrounds that equipment. For the purpose of this section, 'customer's buried piping' does not include branch lines that serve yard lanterns, pool heaters, or other types of secondary equipment. Also, 'maintain' means monitor for corrosion according to § 192.465 if the customer's buried piping is metallic, survey for leaks according to § 192.723, and if an unsafe condition is found, shut off the flow of gas, advise the customer of the need to repair the unsafe condition, or repair the unsafe condition.
>
> "(b) Each operator shall notify each customer once in writing of the following information:
>
> (1) The operator does not maintain the customer's buried piping.
>
> (2) If the customer's buried piping is not maintained, it may be subject to the potential hazards of corrosion and leakage.
>
> (3) Buried gas piping should be --
>
> (i) Periodically inspected for leaks;
>
> (ii) Periodically inspected for corrosion if the piping is metallic; and
>
> (iii) Repaired if any unsafe condition is discovered.
>
> (4) When excavating near buried gas piping, the piping should be located in advance, and the excavation done by hand.

> (5) The operator (if applicable), plumbing contractors, and heating contractors can assist in locating, inspecting, and repairing the customer's buried piping.
>
> "(c) Each operator shall notify each customer not later than August 14, 1996, or 90 days after the customer first receives gas at a particular location, whichever is later. However, operators of master meter systems may continuously post a general notice in a prominent location frequented by customers.
>
> "(d) Each operator must make the following records available for inspection by the Administrator or a State agency participating under 49 U.S.C. 60105 or 60106:
>
> (1) A copy of the notice currently in use; and
>
> (2) Evidence that notices have been sent to customers within the previous 3 years."

(Emphasis added.) Thus, it is the pipeline operator's job to notify a customer of the safety concerns regarding operating and maintaining the downstream piping. The customer has no regulatory obligations.

Federal regulations definitively state that federal pipeline safety standards do not apply to customer-owned lines behind the distributor's meter. Since the WUTC has been federally certified to administer the OPS programs, it must do so consistent with federal regulations. Under 49 USC § 60104(c) Washington "may adopt additional or more stringent safety standards for intrastate pipeline facilities and intrastate pipeline transportation only if those standards are compatible with the minimum standards prescribed under this chapter." The WUTC's traditional practice of not regulating downstream of the meter, unless the customer maintains a master meter system, is appropriately consistent with federal regulation.

B. Customer-Owned, Behind the Meter Natural Gas Piping Is Already Regulated by the Washington State Building Code Council.

Regulating customer-owned piping behind the meter would unnecessarily duplicate, and interfere with, regulations already in place. Industries in Washington install, maintain and operate natural gas behind the meter piping pursuant to Title 51 of the Washington Administrative Code (WAC). Title 51 adopts the International Mechanical Code and the International Fuel Gas Code with some particular revisions as codified in state law. Title 51 is administered and enforced by local building officials with oversight by the Washington State Building Code Council.

Title 51 directly regulates customer-owned, behind the meter piping by providing safety standards for the design, construction, installation, material quality, operation and maintenance of gas piping. Therefore it would be duplicative for the WUTC to also govern pipeline safety behind the distributor's meter at industrial facilities. Duplicative regulation always causes problems for both the regulator and the regulated. For example, assuming a hypothetically different set of laws, both the regulator and the regulated would incur unnecessary, additional expense. One entity should therefore regulate the safety of customer-owned, behind the meter gas piping. Since building officials must always be involved with gas piping related to new construction, local building officials, not the WUTC, should continue to be charged with enforcing the safety of this piping. No regulatory gap is created by the WUTC recognizing that its safety jurisdiction ends at the LDC's meter at industrial facilities.

CONCLUSION

The WUTC should clarify with this Inquiry that safety regulation pursuant to RCW 80.28.210 ends once the gas is delivered to the customers through the distributor's meter. Furthermore, unless an industrial facility resells the gas or remeters it in distribution to another customer or transports it off of its property, no master meter system or transportation of gas is involved. We appreciate this opportunity to submit comments and look forward to continuing to work with the WUTC Staff and others to improve the safety regulations of the WUTC.

DATED: January 31, 2006

Respectfully Submitted,

EDWARD A. FINKLEA, OSB No. 84216
CHAD M. STOKES OSB No. 00400
CABLE HUSTON BENEDICT
HAAGENSEN & LLOYD LLP
1001 SW 5th Avenue, Suite 2000
Portland, OR 97204
Telephone: (503) 224-3092

Of Attorneys for
NORTHWEST INDUSTRIAL GAS USERS

efinklea@chbh.com
cstokes@chbh.com